

**53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

(1) As used in this section, "person" refers to any person as described under Section 53-10-403.

(2) (a) A person under Section 53-10-403 or any person added to the sex offender register as defined in Section 77-41-102 shall provide a DNA specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA specimen unless:

(i) the person was booked under Section 53-10-403 and is not required to reimburse the agency under Section 53-10-404.5; or

(ii) the agency determines the person lacks the ability to pay.

(b) (i) (A) The responsible agencies shall establish guidelines and procedures for determining if the person is able to pay the fee.

(B) An agency's implementation of Subsection (2)(b)(i) meets an agency's obligation to determine an inmate's ability to pay.

(ii) An agency's guidelines and procedures may provide for the assessment of \$150 on the inmate's county trust fund account and may allow a negative balance in the account until the \$150 is paid in full.

(3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA Specimen Restricted Account created in Section 53-10-407, except that the agency collecting the fee may retain not more than \$25 per individual specimen for the costs of obtaining the saliva DNA specimen.

(ii) The agency collecting the \$150 fee may not retain from each separate fee more than \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

(b) The responsible agency shall determine the method of collecting the DNA specimen. Unless the responsible agency determines there are substantial reasons for using a different method of collection or the person refuses to cooperate with the collection, the preferred method of collection shall be obtaining a saliva specimen.

(c) The responsible agency may use reasonable force, as established by its guidelines and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

(d) If the judgment places the person on probation, the person shall submit to the obtaining of a DNA specimen as a condition of the probation.

(e) (i) Under this section a person is required to provide one DNA specimen and pay the collection fee as required under this section.

(ii) The person shall provide an additional DNA specimen only if the DNA specimen previously provided is not adequate for analysis.

(iii) The collection fee is not imposed for a second or subsequent DNA specimen collected under this section.

(f) Any agency that is authorized to obtain a DNA specimen under this part may collect any outstanding amount of a fee due under this section from any person who owes any portion of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section 53-10-407.

(4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as possible and transferred to the Department of Public Safety:

(i) after a conviction or a finding of jurisdiction by the juvenile court;

(ii) on and after January 1, 2011, through December 31, 2014, after the booking of a person for any offense under Subsection 53-10-403(1)(c); and

(iii) on and after January 1, 2015, after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(ii).

(b) On and after May 13, 2014, through December 31, 2014, the responsible agency may cause a DNA specimen to be obtained and transferred to the Department of Public Safety after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(i).

(c) If notified by the Department of Public Safety that a DNA specimen is not adequate for analysis, the agency shall, as soon as possible:

(i) obtain and transmit an additional DNA specimen; or

(ii) request that another agency that has direct access to the person and that is authorized to collect DNA specimens under this section collect the necessary second DNA specimen and transmit it to the Department of Public Safety.

(d) Each agency that is responsible for collecting DNA specimens under this section shall establish:

(i) a tracking procedure to record the handling and transfer of each DNA specimen it obtains; and

(ii) a procedure to account for the management of all fees it collects under this section.

(5) (a) The Department of Corrections is the responsible agency whenever the person is committed to the custody of or is under the supervision of the Department of Corrections.

(b) The juvenile court is the responsible agency regarding a minor under Subsection 53-10-403(3), but if the minor has been committed to the legal custody of the Division of Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the minor has not previously been obtained by the juvenile court under Section 78A-6-117.

(c) The sheriff operating a county jail is the responsible agency regarding the collection of DNA specimens from persons who:

(i) have pled guilty to or have been convicted of an offense listed under Subsection 53-10-403(2) but who have not been committed to the custody of or are not under the supervision of the Department of Corrections;

(ii) are incarcerated in the county jail:

(A) as a condition of probation for a felony offense; or

(B) for a misdemeanor offense for which collection of a DNA specimen is required;

(iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail for any offense under Subsection 53-10-403(1)(c).; and

(iv) are booked at the county jail:

(A) by a law enforcement agency that is obtaining a DNA specimen for any felony offense on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b); or

(B) on or after January 1, 2015, for any felony offense.

(d) Each agency required to collect a DNA specimen under this section shall:

(i) designate employees to obtain the saliva DNA specimens required under this

section; and

(ii) ensure that employees designated to collect the DNA specimens receive appropriate training and that the specimens are obtained in accordance with generally accepted protocol.

(6) (a) As used in this Subsection (6), "department" means the Department of Corrections.

(b) Priority of obtaining DNA specimens by the department is:

(i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody of or under the supervision of the department before these persons are released from incarceration, parole, or probation, if their release date is prior to that of persons under Subsections (6)(b)(ii), but in no case later than July 1, 2004; and

(ii) second, the department shall obtain DNA specimens from persons who are committed to the custody of the department or who are placed under the supervision of the department after July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release from incarceration if the person is imprisoned, or prior to the termination of probation if the person is placed on probation.

(c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii) is:

(i) first, persons on probation;

(ii) second, persons on parole; and

(iii) third, incarcerated persons.

(d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA specimens from persons in the custody of or under the supervision of the Department of Corrections as of July 1, 2002, prior to their release.

(7) (a) As used in this Subsection (7):

(i) "Court" means the juvenile court.

(ii) "Division" means the Division of Juvenile Justice Services.

(b) Priority of obtaining DNA specimens by the court from minors under Section 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the court's jurisdiction, prior to termination of the court's jurisdiction over these minors; and

(ii) second, to obtain specimens from minors who are found to be within the court's jurisdiction after July 1, 2002, within 120 days of the minor's being found to be within the court's jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction over the minor.

(c) Priority of obtaining DNA specimens by the division from minors under Section 53-10-403 who are committed to the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's legal custody and who have not previously provided a DNA specimen under this section, prior to termination of the division's legal custody of these minors; and

(ii) second, to obtain specimens from minors who are placed in the legal custody of the division after July 1, 2002, within 120 days of the minor's being placed in the custody of the division, if possible, but not later than prior to termination of the court's jurisdiction over the minor.

(8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish procedures for obtaining saliva DNA specimens, and shall provide training for employees designated to collect saliva DNA specimens.

(b) (i) The department may designate correctional officers, including those employed by the adult probation and parole section of the department, to obtain the saliva DNA specimens required under this section.

(ii) The department shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

Amended by Chapter 331, 2014 General Session